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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 597

HAROLD P. BALLF,

Petitioner,

vs.

THE PUBLIC WELFARE DEPARTMENT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, and RONALD H. BORN, director thereof, and THE CIVIL SERVICE COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, and individual members thereof, FRANCIS P. WALSH, WILLIAM A. LAHANIER, and CHARLES T. McDONOUGH, and THE RETIREMENT BOARD OF THE CITY AND COUNTY OF SAN FRANCISCO EMPLOYEES' RETIREMENT SYSTEM, and IRA G. THOMPSON, secretary thereof,

Respondents.

REPLY BRIEF OF PETITIONER TO BRIEF FOR RESPONDENTS IN OPPOSITION on Petition for a Writ of Certiorari to the District Court of Appeal, State of California.

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REPLY BRIEF OF PETITIONER TO BRIEF FOR RESPONDENTS IN OPPOSITION on Petition for a Writ of Certiorari to the District Court of Appeal, State of California.

Petitioner respectfully presents the points below in reply to the statements made in the brief of respond-

ents in opposition to the issuance of a writ of certiorari herein. This reply anwers categorically the points raised by respondents.

JURISDICTION.

Respondents' statement, page 2 of their brief, that "This case at no time revolved around any federal law. It was tried exclusively on the theory of law that a municipality has the power under its charter to prescribe the residence requirements of its employees . . ." is a palpable misstatement of facts.

28 U.S.C. 1257 (3) cited by respondents, their brief page 7, gives this Honorable Court jurisdiction in certiorari to state Courts ". . . where any title right, . . . is specifically set up or claimed under the constitution, treaties or statutes of . . . the United States."

Paragraph VI of the original petition directly refers to the Federal G.I. Bill of Rights. Paragraphs VII and VIII thereof refer directly to the bill mentioned in Paragraph VI. Paragraph IX shows that petitioner had remaining entitlement to benefits under this bill. Ever since its adoption Public Law No. 346, 58 Stat. 284, 78th Congress, Servicemen's Readjustment Act of 1944, has been commonly and popularly known as the "G.I. Bill of Rights," or the "GI Bill" (see Information Please Almanac 1957, pp. 893, 364 and The World Almanac and Book of Facts, for 1957, pp. 15, 753. Of this the Court may take judicial notice. Paragraph XII of the original petition quotes Civil Service Rule 31.3 in full. This rule deals exclu-

sively with educational leave and makes it quite clear that it is granted to enable veterans to take advantage of "benefits under any vocational or other training or educational program pursuant to laws of the United States . . .", (Petition herein, Appendix A, page v). Paragraphs XIII and XIV of the original petition state very clearly petitioner's status with regard to this leave.

The following pages of the record, containing the transcript of hearing introduced by respondents, contain ample evidence that the whole matter revolved around a federal law. 31, line 8, "leave of absence to take care of his Federal and California benefits, . . .", 44, line 6, "I have a little over one year's entitlement leave under the Federal GI Bill . . .", 48, line 24, "And that is what I am going over there under, is the GI benefits. . . .", and pages 47 to 55 and 62 and 63 deal almost exclusively with petitioner's status as a veteran under the Federal GI Bill, with this statement commencing line 8, page 62, "This is taken exactly from it. I didn't want to make a copy of it, because sometimes the federal people get a little touchy if you reproduce their forms."

Respondents brief, page 3, states "Petitioner alludes to the footnote in the opinion at page xiii as indicating that the court did have in mind a federal question when it decided this case." They then discuss the footnote on page xii which refers to two irrelevant cases, and completely ignore the footnote to which they drew attention, that is the footnote on page xiii which does not refer to any case. Petitioner *em-*

phatically repeats that the fact that the District Court of Appeal was familiar with this law is indicated by the footnote in the opinion, Appendix B, attached to petition herein, and found on page xiii thereof.

Petitioner has always strenuously objected to the injection of the issue of residence as wholly irrelevant, and a review of the original petition will show that it was not raised by him. Similarly a review of the original answer will show that the issue of residence was not raised therein by respondents. The issue of residence was therefore never joined in this case. It was irrelevantly injected by respondents in the arguments as a defense for their actions and unfortunately became the irrelevant issue upon which all of the California Courts went astray.

QUESTION PRESENTED.

The real question presented is not as stated by respondents, their brief page 3, but whether or not there was an early clear abuse of discretion by a quasi-judicial body, uncorrected by the California Courts, which can only be resolved by answers to the questions presented to this Honorable Court by petitioner. Even if the question presented by respondents were allowed to stand, it would still involve a federal question because of the rule of the Civil Service Commission alluded to therein. The pertinent rule is 31.3 which deals with educational leave to take advantage of the benefits of "vocational or other training or educational program pursuant to the laws of the United States . . .", (Petition, Appendix A, page v).

STATUTES INVOLVED.

Public Law No. 346, 58 Stat. 284, Appendix A, Petition, page i, should have been included here for the reasons stated above.

STATEMENT.

Respondents' statement, brief page 4, that petitioner had been informed that his leave had not been approved, falls far short of a statement that it had been disapproved. It was never disapproved, and the Civil Service Commission's own rule, 31.3 requires positive action one way or the other. (Petition, Appendix A, page v.)

Respondents' statement, brief page 5, that "After a hearing thereon judgment was entered for respondents (R.T. 70)," is not correct. It was entered in two parts, one of which favored petitioner, and the other of which was made the basis of appeal.

(RESPONDENTS') REASONS FOR DENYING THE WRIT.

FIRST. THERE IS NO FEDERAL QUESTION OF LAW INVOLVED.

Petitioner showed clearly in his petition that there was a substantial Federal Question involved. It is idle to assert that respondents were unaware that a federal law was involved, since the entire case revolved around the question as to whether petitioner should be deprived of his rights under Public Law No. 346. If it had not been for Public Law No. 346 the case undoubtedly would never have arisen. The

Civil Service Commission's Rule 31.3 itself endeavored to give petitioner these rights. Misinterpretations of local and state law were used to circumvent Public Law No. 346 and to deny petitioner his rights. The Constitutional provisions relied upon provided a guarantee of these rights.

SECOND. THE EXISTENCE OF A FEDERAL QUESTION OF LAW WAS NEVER AT ANY TIME URGED OR FRAMED BY PETITIONER IN THE STATE COURTS.

The rules of the Supreme Court require that a federal question be raised. They do not require any formal terms in which the question must be couched. The petition, and what has been said above, adequately show that a federal question was before the California Courts at all times. Respondents' statement, brief page 7, is entirely erroneous. As has already been stated the sole issue joined by the pleadings concerned the application of the G.I. Bill and the irrelevant issue of residence was not raised in the original petition, nor in the original answer. It is an entirely irrelevant issue that was injected into the argument by way of defense. It led the California Courts astray. Any argument that petitioner may have been compelled to make in this regard, and it is not a matter of record herein, became necessary because this irrelevant issue was allowed to stand, even though repeatedly objected to, and had to be met. 10 U.S.C. 1257 (2) and (3), cited by respondents, their brief page 7, does confer jurisdiction on this Honorable Court.

THIRD. THE DECISIONS OF THE STATE COURTS ARE BASED UPON STATE LAW AND DO NOT CIRCUMVENT PUBLIC LAW NO. 346, NOR ANY PROVISION OF THE CONSTITUTION.

If this argument were true there would never be any appeal from the decisions of a state Court. This, of course, is absurd. State laws may oppose, may come in conflict with, or if unjudiciously enforced and improperly interpreted may entirely prevent the application of a federal law. That is exactly what happened in the instant case because the application of Public Law No. 346 was circumvented. An irrelevantly injected issue of residence was introduced and allowed to stand in order to deprive petitioner of his rights under Public Law No. 346. A review of the record will indicate that the decision of the trial Court and the opinion of the District Court of Appeal were not based upon a qualified finding of fact but upon an irrelevantly injected issue of residence.

CONCLUSION.

Respondents' conclusion is in error. For the reasons stated in the petition for a writ of certiorari herein, and for the foregoing reasons presented in rebuttal of respondents' reasons for their conclusion, petitioner urges that a writ of certiorari should be granted, and petitioner prays for his costs and disbursements.

Dated, Walnut Creek, California,
December 13, 1957.

Respectfully submitted,
HAROLD P. BALLF,
Attorney at Law in Pro Per.